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| 09/686,206 | 10/10/2000 | Jack D. Robinson | 7933P001 | 6139 |

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| EXAMINER |
|---|
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| | Application No. | Applicant(s) |
|---|---|---|
| **Office Action Summary** | 09/686,206 | ROBINSON ET AL. |
| | Examiner | Art Unit | |
| | SCOTT CHRISTENSEN | 2144 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on <u>13 December 2007</u>.

2a)☒ This action is **FINAL**.  2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) <u>1-20</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-20</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>13 December 2007</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All  b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

## DETAILED ACTION

1.      This Office Action is in regards to the most recent papers filed on 6/28/2007.

### *Claim Rejections - 35 USC § 112*

2.      The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3.      Claims 3-10 and 12-19 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

With regard to claim 3, the instant claim recites, "wherein the 3D computing environment can be deactivated," where the specification does not appear to describe deactivating the 3D computing environment.

Further, with regard to claim 3, the instant claim recites, "without displaying the 2D desktop environment first." The specification describes on page 11, lines 7-9, describes how the monitor immediately displays the computer desktop as a 3D computing environment, but does not specifically disclose that the 2D environment is not displayed.

With regard to claims 4-10, the instant claims depend from claim 3, and are rejected for the same.

With regard to claims 12-19, the instant claims are substantially similar to claims

12-19, and are rejected for substantially similar reasons.


### *Double Patenting*

4.      The nonstatutory double patenting rejection is based on a judicially created
doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the
unjustified or improper timewise extension of the "right to exclude" granted by a patent
and to prevent possible harassment by multiple assignees.   A nonstatutory
obviousness-type double patenting rejection is appropriate where the conflicting claims
are not identical, but at least one examined application claim is not patentably distinct
from the reference claim(s) because the examined application claim is either anticipated
by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140
F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29
USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.
1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422
F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163
USPQ 644 (CCPA 1969).
        A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d)
may be used to overcome an actual or provisional rejection based on a nonstatutory
double patenting ground provided the conflicting application or patent either is shown to
be commonly owned with this application, or claims an invention made as a result of
activities undertaken within the scope of a joint research agreement.
        Effective January 1, 1994, a registered attorney or agent of record may sign a
terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with
37 CFR 3.73(b).

Claims 1-2 are rejected on the ground of nonstatutory obviousness-type double

patenting as being unpatentable over claims 1 and 9 of U.S. Patent No. 7,168,051.

Although the conflicting claims are not identical, they are not patentably distinct from

each other because the difference between claims 1-4 of the instant application and

claims 1 and 9 of Patent 7,168,051 (other than the use of the terms "first computer

system" and "first user" without the inclusion of a second computer system or a second

user in Patent 7,168,051 as opposed to "a computer system" and "a user" in the instant

application.) is **First**, "including displaying at least a portion of the content of the

converted web page in a persistent client window of the 3D desktop that is persistent

even if a connection between the first computer system and the Internet has been

terminated" (as presented in Patent 7,168,051), **Second**, "downloading a 3D (three

dimensional) environment development program to a computer system from a Web

server over the Internet and executing the 3D development program within the

computer system to convert a 2D (two dimensional) desktop environment of the

computer system into a 3D computing environment, including installing an interpreter

within an operating system of the computer system" (as in the instant application),

**Third**, the use of the term "application program" instead of "Web page" (as in the instant

application, and **Fourth**, the instant application includes limitations that merely require a

server to provide updates and additional content, then to have the user's computer store

the updates and content ("accessing a registry server over the Internet to download

additional 3D graphical objects to be used in the 3D desktop, wherein the registry server

is associated with an community having a plurality of members, and wherein the registry

server is configured to maintain 3D graphical objects, including the downloaded 3D

graphical object, used by the plurality of members including software updates to the 3D

desktop; and storing the downloaded 3D graphical objects in a repository within the

computer system, wherein the repository is configured to store all graphical objects

used by the 3D desktop, including graphical objects downloaded over the Internet,

updates from the registry server, and user defined objects defined locally by a user of

the computer system.").

**First**, the ability to navigate to a Web page, and continue to view the single Web page in a browser window is very well known in the art, and has been implemented before the filing of the instant application in versions of Internet Explorer, Netscape Navigator, and other browsers. When a user connects to a Web page using one of these browsers, the page stays on the screen, even if the user disconnects from the Internet, until the user closes the window. When this functionality is implemented in the invention as claimed in claims 1-2, the 3D environment would download the information for the Web page, and display the Web page until it is navigated away from or closed, even when the connection to the Internet is terminated.

**Second**, the limitation in claims 1 and 2 of the present application of "downloading a 3D (three dimensional) environment development program to a computer system from a Web server over the Internet and executing the 3D development program within the computer system to convert a 2D (two dimensional) desktop environment of the computer system into a 3D computing environment, including installing an interpreter within an operating system of the computer system" amounts to nothing more than downloading the software to perform the remaining steps of the method from a Web server and installing and executing the program to execute the steps. Downloading software from a Web server is very well known in the art to provide a fast and low cost means for distribution of software with options to grant limitations of use on the software until the user pays some sort of licensing fee (i.e. shareware). Further, when software is downloaded, the only way for a user to benefit from the software is to install it on his or her own computer.

**Third**, as in the instant specification on page 16, lines 10-13, an application may exist on a webpage or off, meaning that an application is reasonably interpreted as being any feature on a web page that is interactive or dynamic in nature (as opposed to static text) or any other program or software. Thus, the difference between a Web page and Application program is not a patently distinct one, as it is extremely well known in the art to provide interactive or dynamic features on a Web page, which according to the instant disclosure, may be interpreted as being an application.

**Fourth**, servers to provide updates and additional content for software applications of all kinds are well known in the art, as is downloading and storing the content on a computer system (This limitation's obviousness is further detailed below in the rejection of claim 1).

Accordingly, the claims 1 and 9 of Patent 7,168,051 are obvious in view of the claims 1-2 of the instant application. Furthermore, claims 1-2 of the instant application are obvious in view of claims 1 and 9 of Patent 7,168,051. As such, neither claims 1-2 of the instant application nor claims 1 and 9 of Patent 7,168,051 are patently distinct, thus claims 1-2 of the instant application are rejected on the ground of nonstatutory obviousness-type double patenting.

### Claim Rejections - 35 USC § 103

5.     The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6.      Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US

Patent Number 6,088,032 to Mackinlay, hereafter referred to as "Mackinlay."

With regard to claim 1, Mackinlay discloses a computer-implemented method

comprising:

providing the 3D computing environment representing a 3D desktop of a

computer system in a 3D environment which is presented as a 3D desktop in a 3D room

environment, wherein one or more icons of the 2D desktop environment are spacially

displayed on multiple surfaces of the 3D room environment (Mackinlay: Figures 2-9 and

13-16 and column 4, lines 43-49 and Figure 2a. It is noted that the documents that are

represented in the icons in Mackinlay are icons that are also represented in the 2D

desktop environment.);

receiving a two-dimensional application program (Mackinlay: Column 11, line 62

to column 12, line 8. As the environment is being used to perform operations with

respect to a web page, the web page must have been received. It is noted that

application programs may also be components within the web page, and are thus part

of many web pages. Further, according to Mackinlay: Column 7, lines 5-22, pages are

interacted with using a browser capable of viewing HTML formatted documents, the

browser, itself, also being an application.);

the interpreter dynamically converting the two-dimensional application program to

a form usable in the three-dimensional computing environment (Mackinlay: Column 5,

lines 41-50); and

presenting the content of the converted application program within the 3D

computing environment (Mackinlay: Figures 13 and 14) to allow a user of the computer

system to navigate the content of the application program within the 3D computing

environment (Mackinlay: Column 11, line 63 to column 13, line 9. The ConeWalker

allows users to navigate the web pages.).

Mackinlay does not disclose expressly:

downloading a 3D (three dimensional) environment development program to a

computer system from a Web server over the Internet;

executing the 3D development program within the computer system to convert a

2D (two dimensional) desktop environment of the computer system into a 3D computing

environment, including installing an interpreter within an operating system of the

computer system;

accessing a registry server over the Internet to download additional 3D graphical

objects to be used in the 3D desktop, wherein the registry server is associated with an

community having a plurality of members, and wherein the registry server is configured

to maintain 3D graphical objects, including the downloaded 3D graphical object, used by

the plurality of members including software updates to the 3D desktop; and

storing the downloaded 3D graphical objects in a repository within the computer

system, wherein the repository is configured to store all graphical objects used by the

3D desktop, including graphical objects downloaded over the Internet, updates from the

registry server, and user defined objects defined locally by a user of the computer

system.

A person of ordinary skill in the art would have known how to perform the steps

of downloading a 3D (three dimensional) environment development program to a

computer system from a Web server over the Internet and executing the 3D

development program within the computer system to convert a 2D (two dimensional)

desktop environment of the computer system into a 3D computing environment,

including installing an interpreter within an operating system of the computer system.

It is noted that the claim limitations are met by having the software program

performing the functionality in the claim (providing the 3D computing environment,

receiving a two-dimensional application program, converting the two-dimensional

application program, and presenting the content of the converted application program)

on a web server, then having the client download the software program (downloading a

3D (three dimensional) environment development program to a computer system from a

Web server over the Internet) then installing and running the program to show the 3D

desktop environment, where the interpreter is simply a software module within the

program (executing the 3D development program within the computer system to convert

a 2D (two dimensional) desktop environment of the computer system into a 3D

computing environment, including installing an interpreter within an operating system of

the computer system.). Downloading software from the Internet, and thus from a Web

server, was notoriously well known in the art (see, for example, "CNET: Downloads,"

downloaded from http://web.archive.org/web/19991008154521/http://download.com/,

posted October 8, 1999, hereafter referred to as "CNET." CNET allows software

programs of all types to be downloaded to a user's computer, where the user can then install and run the software program.

It would have been obvious to perform the steps of downloading a 3D (three dimensional) environment development program to a computer system from a Web server over the Internet and executing the 3D development program within the computer system to convert a 2D (two dimensional) desktop environment of the computer system into a 3D computing environment, including installing an interpreter within an operating system of the computer system.

The suggestion/motivation for doing so would have been that providing programs to be downloaded from a Web server to be installed and executed by a user allows the software to be distributed very rapidly to users in a large area. The software can even be a limited version (i.e. shareware) that demonstrates the capabilities of the software, allowing a user to evaluate the software before purchasing a full version of the software from the company, the purchasing of which could either be performed through another download, or a registration key in order to unlock features that were presented in the downloaded version. This gives the user a chance to try a software package that he/she may not have otherwise tried, then purchase the software package.

Further, a person of ordinary skill in the art would have known how to have a server on the Internet for providing additional content and software updates to users of the software (accessing a registry server over the Internet to download additional 3D graphical objects to be used in the 3D desktop (the server with additional content (graphical objects) and updates), wherein the registry server is associated with an

community having a plurality of members (the server is associated with the users of the

system, which is a community having a plurality of members), and wherein the registry

server is configured to maintain 3D graphical objects, including the downloaded 3D

graphical object, used by the plurality of members including software updates to the 3D

desktop (the server is capable of storing the required information).). Further, with such

a server, it would have been well known how to store the downloaded 3D graphical

objects in a repository (memory) within the computer system, wherein the repository is

configured to store all graphical objects used by the 3D desktop, including graphical

objects downloaded over the Internet, updates from the registry server, and user

defined objects defined locally by a user of the computer system (any hard drive or

memory is configured to store any information that can be contained within the amount

of space on the memory or hard drive.). For example, US Patent 6,677,964 to Nason et

al. discloses that definition files (content) and updates may be downloaded for the

software disclosed by Nason (Column 39, lines 26-49).

It would have been obvious to a person of ordinary skill in the art to access a

registry server to download 3D graphical objects (content) to be used in the software of

Mackinlay and have the server additionally storing updates. It would have also been

obvious to store the graphical objects in the computer system of the user.

The suggestion/motivation for doing so would have been that providing additional

content and updates from a server to the users of the software of Mackinlay would

provide customers with support that would attract more customers to the provider of the

software. Further, a person of ordinary skill in the art would have been motivated to

provide convenient ways for the customer to download the content and updates, which would be from a server over the Internet.

With regard to claim 3, Mackinlay teaches the invention as substantially claimed except:

wherein the 2D desktop environment is an existing desktop environment as a part of the operating system of the computer system, and wherein the 3D computing environment is installed from the 2D desktop environment;

wherein the 3D computing environment can be activated from the 2D desktop environment in response to a user request in which the 2D application program is converted by the interpreter into a 3D application and the graphical objects are presented in a 3D manner;

wherein the 3D computing environment can be deactivated to reinstate the 2D desktop environment in response to a user request in which the 2D application program is not converted into a 3D application and the graphical objects are presented in a 2D manner; and

wherein when the 3D computing environment is activated, the 3D comptuting environment is automatically presented when the computer system reboots without having to display the 2D desktop environment first.

It would have been obvious to have the 2D desktop environment is an existing desktop environment as a part of the operating system of the computer system, and

wherein the 3D computing environment is installed on the top of the 2D desktop
environment.

The suggestion/motivation for doing so would have been that most operating
systems available at the time of filing of the instant application had a GUI which utilized
some sort of 2D desktop (i.e. Windows, several versions of Linux, and Mac OS). Any
program installed in one of these operating systems would be installed from the 2D
desktop environment. Therefore, the program disclosed by Mackinlay would benefit
from allowing the claimed functionality, as it is required in order to install in most of the
popular operating systems without severely changing the way the operating system
functions (i.e. rewriting a significant portion of the code of the operating system itself).

It would have been obvious to allow Mackinly to allow the 3D computing
environment to be activated from the 2D desktop environment, and allow the 3D
computing environment to be deactivated to reinstate the 2D desktop environment in
response to a user request.

The suggestion/motivation for doing so would have been that allowing the
program to utilize Microsoft Windows allows the software to be utilized on the most
popular operating system platform. Microsoft Windows allows for programs to be
activated, whether the user manually activates the program, or the operating system is
set up to automatically start the program. Programs can also typically be deactivated by
using code that is typically included in most software programs to allow the program to
be deactivated (making the software more user-friendly), using the task manager to
force the program to close, and/or using the add/remove programs feature of Microsoft

Windows to remove the software from the operating system all together. When any of these functions are performed, the software would be deactivated, reinstating the regular desktop of Microsoft Windows. In this case, activating the software enables the 3D desktop and deactivating the software disables the 3D desktop, returning the user to the 2D desktop.

It would have been obvious to have it so that when the 3D computing environment is activated, the 3D computing environment is automatically presented when the computer system reboots without displaying the 2D desktop environment.

The suggestion/motivation for doing so would have been that some of the most popular operating systems allows for software to be automatically started when the computer is booted. For example, Microsoft Windows allows for programs to automatically be started as services, or to be started from the "Startup" folder in the Start menu. The program can either be started up within a window that does not take up the entire screen or in a window that takes the entire screen (or full screen mode). In the latter case, the user has a larger environment to work with, and does not involve displaying the 2D desktop environment (as the entire environment would either be behind the full screen display of the 3D environment or would be not currently activated if the program of Mackinlay is operated as a full screen application.

With regard to claim 4, Mackinlay teaches the invention as substantially claimed except:

developing 3D enabled applications using a software development kit (SDK)

within the computer system, the 3D enabled applications developed by the SDK can be

presented in a 3D manner in the 3D desktop; and

accessing the registry server over the Internet to download software updates

associated with the SDK.

However, it was well known in the art to have an SDK for developing 3D software

applications that are capable of being presented in a 3D manner in the 3D desktop and

to download software updates associated with the SDK.

It would have been obvious to have an SDK for developing 3D software

applications that are capable of being presented in a 3D manner in the 3D desktop.

The suggestion/motivation for doing so would have been that SDKs that can be

used for developing 3D applications are well known in the art (i.e. DirectX and

OpenGL). These SDKs were available, at the time of the invention, for download and

installation, and were used to develop 3D applications. Further, users often create plug-

ins or mods for different applications, where the plug-ins or mods would be created by

the user using some form of a software development kit. Creating the plug-ins or mods

allows the user to modify the functionality of software (in this case, the software of

Mackinlay) to suit the individual user's tastes. It is further noted that the Open Source

community encourages users to modify programs by creating plug-ins or directly

modifying the code of the application. It is noted that the software updates only need to

be somehow associated with the SDK, where how the updates are associated with the

SDK is not defined. Being on the same computer system constitutes being "associated."

With regard to claim 5, Mackinlay teaches the invention as substantially claimed except that the Web server comprises a maintenance system and database communitively coupled to the registry server for periodic updates of 3D computing environment-based protocols, as well as graphical objects stored in the Web server as a library, wherein by storing the graphical objects in the maintenance system and database of the Web server, the SDK can be used by users to automatically generate 3D enabled Web pages without having the SDK on their desktops.

However, it would have been well known in the art to have the Web server comprises a maintenance system and database communitively coupled to the registry server for periodic updates of 3D computing environment-based protocols, as well as graphical objects stored in the Web server as a library. The remaining claim language, "wherein by storing the graphical objects in the maintenance system and database of the Web server, the SDK can be used by users to automatically generate 3D enabled Web pages without having the SDK on their desktops" is clearly intended use, and does not have any limiting affect on the method as claimed, as this is clearly a hypothetical possibility that relies on the graphical objects being stored in the maintenance system allowing some functionality to occur, where the functionality doesn't necessarily occur.

It would have been obvious to have a maintenance system and database communitively coupled to the registry server for periodic updates of 3D computing

environment-based protocols, as well as graphical objects stored in the Web server as a

library.

The suggestion/motivation for doing so would have been that the modified

software of Mackinlay allows for software updates, so having some maintenance

system and database connected to the registry server within the single web server

would allow the updates to be provided for while maintaining records of the updates and

some maintenance of the files, system, or connections to occur.  It is noted that neither

the database or maintenance system have any functionality claimed, only that they are

somehow coupled to the registry server for the purposes of providing periodic updates.


With regard to claim 6, Mackinlay teaches the invention as substantially claimed

except:

purchasing the 3D environment development program from an e-commerce

server over the Internet;

in response to the purchase, the e-commerce server notifying the Web server to

allow the computer system to download the purchased 3D environment development

program from the Web server; and

the e-commerce server subsequently delivering advertisement information to the

computer system to be represented within the 3D desktop of the computer system.

However a person of ordinary skill in the art would have known how to allow a

user to purchase the software of Mackinlay over the Internet from an e-commerce

server, have the e-commerce server notify the Web server to allow the download, and

subsequently delivering advertisement information to the computer system to be represented in the 3D desktop environment of the computer system.

It would have been obvious to allow a user to purchase the software of Mackinlay over the Internet from an e-commerce server, have the e-commerce server notify the Web server to allow the download, and subsequently delivering advertisement information to the computer system to be represented in the 3D desktop environment of the computer system.

The suggestion/motivation for doing so would have been that allowing users to purchase software over the Internet and subsequently downloading the software allows the publisher of the software to quickly sell the software to a larger user base in a convenient fashion that reduces the cost associated with the transaction (e.g. packaging the software and providing a disk or other means for carrying the program code). Having an e-commerce server handling the purchases allows the purchases to be performed by a secure server either owned by the publisher, or offload the e-commerce functionality to a third party for processing payment information. Having the e-commerce server notify the Web server that the download is purchased, and can be downloaded allows the publisher to avoid providing free software to users. Lastly, delivering advertisement information allows the software publisher and/or e-commerce server to generate additional funds through the advertising. Having the advertising presented within the 3D desktop environment ensures that the user is exposed to the advertising when the software is used.

With regard to claim 7, Mackinlay does not disclose expressly:

wherein executing the 3D development program within the computer system comprises installing a persistent kernel within the computer system, wherein a user of the computer system is provided with a demonstration of the purchased 3D desktop for the user to decide whether to activate the 3D desktop, wherein if the user chooses not to activate the 3D desktop, the persistent kernel is still active in an unobtrusive 2D persistent window on the user's desktop for delivering and presenting advertisement information to the user, wherein the registry server maintains information regarding downloads information to a plurality of computer systems and purchased from the e-commerce server, including user profiles, buying patterns, and searches.

However, it was well known in the art to provide demonstration versions of software (shareware), where the demonstration version has a cost associated with it, then allowing the user to activate the software (usually by paying a fee for the full version). Further, it was well known to bundle advertising software with software packages, where the advertising software presents advertisements in a fashion that does not hinder the user's experience (unobtrusive), but cannot be closed easily (persistent), and cannot be uninstalled easily (persistent kernel). Further, it was well known in the art to maintain information of users that access systems and/or services to third parties.

Thus, it would have been obvious to provide demonstration versions of software (shareware), where the demonstration version has a cost associated with it, then allowing the user to activate the software (usually by paying a fee for the full version)

(wherein a user of the computer system is provided with a demonstration of the purchased 3D desktop for the user to decide whether to activate the 3D desktop). Further, it was well known to bundle advertising software with software packages, where the advertising software presents advertisements in a fashion that does not hinder the user's experience (unobtrusive), but cannot be closed easily (installing a persistent kernel within the computer system) (the persistent kernel is still active in an unobtrusive 2D persistent window on the user's desktop for delivering and presenting advertisement information to the user), and cannot be uninstalled easily (persistent kernel). Further, it was well known in the art to maintain information of users that access systems and/or services to third parties (wherein the registry server maintains information regarding downloads information to a plurality of computer systems and purchased from the e-commerce server, including user profiles, buying patterns, and searches).

The suggestion/motivation for doing so would have been that offering a shareware package allows the user to evaluate the software before purchasing the full-priced software, allowing users that would not otherwise purchase the software to try the software and perhaps change their minds. Further, charging for the shareware allows the company to ensure that some of the costs of distributing the shareware package (e.g. storage) is recovered. Bundling some sort of adware (advertising software) with the software package allows the publisher to generate revenue from advertisers. Further, having a persistent window with a persistent kernel ensures that users cannot readily get rid of the advertising, allowing for more exposure of the

advertisements, making the service more valuable for the advertiser. Maintaining

information on profiles, buying patterns, searches, downloads, and purchases allows

the publisher to generate profiles that can be used for advertising purposes, whether by

selling the information to advertisers, or creating demographic information to

demonstrate to advertisers that the population that is utilizing the software would be an

effective population to advertise to.


With regard to claim 8, Mackinlay does not disclose expressly that the registry

server is accessible from the e-commerce server to obtain information about users of

the e-commerce server, such that the e-commerce server can generate targeted

advertising and product offerings for a particular user.

However, it would have been well known to allow e-commerce servers to access

information on the registry server to allow targeted advertising to be generated.

It would have been obvious to allow e-commerce servers to access information

on the registry server to allow targeted advertising to be generated.

The suggestion/motivation for doing so would have been that revenue can be

generated by selling information to the e-commerce server about the users that access

the registry server.

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With regard to claims 2 and 12-17, the invention claimed is substantially similar

to the invention claimed in claims 1 and 3-8, respectively, and are rejected for

substantially similar reasons.

## Claim Rejections - 35 USC § 103

7.      The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8.      Claims 9-11 and 18-20 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Mackinlay in view of Fisher in US Patent Application 2001/0019332,

hereafter referred to as "Fisher."

With regard to claim 9, Mackinlay teaches the invention as substantially claimed

except:

accessing a community server over the Internet via the 3D desktop, the

community server providing information and services to a community having a plurality

of members;

activating a 3D version of the community server via a user interface of the

community server; and

in response to the activation, the community server communicating with a 3D

environment special shell component having a 3D representation of a 2D environment

previously available from the community server, such that instead of viewing the content

provided by the community server in a 2D manner, a user of the computer system can

access the same content in a 3D manner using the 3D desktop of the computer system.

However, Fisher teaches:

accessing a community server over the Internet, the community server providing

information and services to a community having a plurality of members (Fisher:

Paragraph [0014]);

activating a 3D version of the community server via a user interface of the

community server (Fisher: Paragraph [0014]); and

in response to the activation, the community server communicating with a 3D

environment special shell component having a 3D representation of a 2D environment

previously available from the community server, such that instead of viewing the content

provided by the community server in a 2D manner, a user of the computer system can

access the same content in a 3D manner using the 3D desktop of the computer system

(Fisher: Figure 3).

It would have been obvious to access the system of Fisher within the teachings

of Mackinlay.

The suggestion/motivation for doing so would have been that Mackinlay is

concerned with accessing Web Pages downloaded from the Internet (Mackinlay:

Column 2, lines 10-14). Allowing Mackinlay to access the system disclosed by Fisher

allows users access 3-dimensional information about products that would otherwise

only be available as 2-dimensional pictures, allowing a user to better evaluate the

product to be purchased (Fisher: Paragraphs [0010] to [0011]).


With regard to claim 10, Mackinlay as modified by Fisher teaches:

navigating content of the community server in a 3D manner via the 3D desktop of the computer system (Fisher: Figure 3).

Mackinlay as modified by Fisher do not teach expressly:

interacting with other members of the community in a 3D manner via the 3D desktop of the computer system.

However, a person of ordinary skill in the art would have known how to allow the user to interact with other members of the community in a 3D manner via the 3D desktop of the computer system.

It would have been obvious to allow the user to interact with other members of the community in a 3D manner via the 3D desktop of the computer system.

The suggestion/motivation for doing so would have been that providing an evaluation system for the items presented in the disclosure of Fisher would allow users to interact with each other by reviewing the products being viewed by the user. This information would be accessed in a 3D manner, as the page is presented within the 3D environment.

With regard to claim 11, the subject matter disclosed in claim 11 is substantially similar to that in claim 7, and is rejected for substantially similar reasons.

With regard to claims 18-20, the instant claims are substantially similar to claims 8-11, and are rejected for substantially similar reasons.

## *Response to Arguments*

### Obvious Type Double Patenting

9.      Claims 1-4 were rejected in the Office Action mailed 8/23/2007. For the reasoning as stated above in the Double Patenting rejections, claims 1 and 2 stand rejected on the ground of obvious type double patenting. It is noted that Applicant may submit a terminal disclaimer when the application is in condition for allowance (Applicant's Remarks: Page 20, Lines 7-9).

### Rejections under 35 USC 102 and 35 USC 103

10.     Applicant's arguments filed 12/13/2007 have been fully considered but they are not persuasive.

On page 21, Applicant argues that Mackinlay does not convert or replace the existing desktop of an operating system as required by claim 1. First, it is noted that claim 1 requires the conversion of a 2D desktop environment of a computing system into a 3D computing environment. This is not the same as converting an existing 2D desktop of an operating system into a 3D computing environment. Further, it is noted that there is no requirement as to what constitutes converting a 2D desktop environment into a 3D computing environment.

On page 22, Applicant argues that it was not obvious to download a 3D development program to a computer system, as in claim 1. Applicant argues that the

CNET article only discloses Web download techniques, but not downloading a 3D program to convert the existing 2D desktop into a 3D desktop. It is noted that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, the disclosure of Mackinlay is directed towards a software program that performs the functionality claimed of converting a 2D desktop environment to a 3D computing environment, but Mackinlay does not disclose expressly downloading and installing (executing) the program. However, CNET shows that it was well known to download various programs. Applicant has failed to argue that Mackinlay is not a software program that could have been downloaded in a fashion similar to that of CNET, or that a person of ordinary skill in the art would not be motivated to download the software of Mackinlay.

Applicant further states, "It is respectfully submitted that the present invention as claimed is not about downloading software from a Web. Rather, the present invention as claimed is about downloading software application from a Web to render an existing 2D desktop into a 3D desktop, including an interpreter to dynamically convert any 2D data into 3D data to be presented in the 3D desktop." This is not contested by Examiner. However, it is noted that the software application is what renders an existing 2D desktop into a 3D desktop, including an interpreter to dynamically convert any 2D data into 3D data to be presented in the 3D desktop, and that the individual steps in question are about downloading and installing/running that software program. The

actual steps of downloading and installing a software program is known to a person of

ordinary skill in the art, as evidenced by the CNET article, where the disclosure of

Mackinlay is directed towards a software program that can be downloaded and installed

according to that knowledge.

### *Conclusion*

11.    **THIS ACTION IS MADE FINAL.**  Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action.  In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action.  In no event, however, will the statutory period for reply expire later

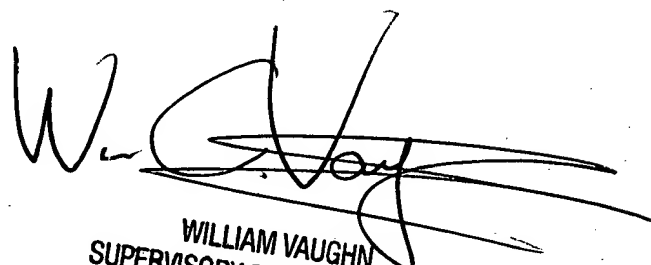than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Scott Christensen whose telephone number is (571)

270-1144.  The examiner can normally be reached on Monday through Thursday

6:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Vaughn William can be reached on (571) 272-3922.  The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SBC

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